IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 1244/2006
(Darbara Singh Vs. State of Rajasthan & Anr.)

Date of Order : 26/07/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. H.S.S. Kharlia & Mr. S. S. Dhillon,for the petitioner.
Mr. V.R. Mehta, P.P. for the respondent State.
Mr. M. K. Garg, for Non-petitioner No. 2- Complainant.

BY THE COURT:-

By the instant Criminal Misc. Petition under Section 482 Cr.P.C, the accused-petitioner has challenged the Order dated 30.08.2006 passed by the Additional Session Judge, Shri Karanpur (for short "the Revisional Court" hereinafter) whereby the Revision Petition filed by the petitioner against the order dated 27.04.2006 passed by the Additional Chief Judicial Magistrate, Shri Karanpur (for short "the trial Court" hereinafter) was dismissed.

I heard the learned counsel for the parties and perused the order passed by the Courts below.

The facts and circumstances giving rise to instant petition are that the non-petitioner No. 2 – Subhash Bhateja filed a complaint before the trial Court which was sent to Police Station, Shri Karanpur for investigation under Section 156(3) Cr.P.C. After investigation, the police filed the Final Report. On protest petition filed by the non-petitioner No. 2, the trial Court took the cognizance of offence under Section 420 IPC and issued the process, that order came to be challenged by the petitioner before the Revisional Court. The Revisional Court on consideration of the entire material including the statement of the complainant under Section 200 Cr.P.C. and the statement of witnesses produced by complainant under Section 202 Cr.P.C. prima facie came to conclusion that there is sufficient material to proceed against the petitioner for the offence noticed above. Hence, this petition.

It is contended by the counsel for the petitioner that it is true that the land, which was agreed to be sold to complainant – non-petitioner No. 2 for a consideration of Rs. 3,75,000/- by way of agreement to sell stands registered in the name of Tara Singh, who is none else but the brother of the petitioner and therefore, the petitioner had a right to enter into an agreement to sell by receiving a sum of Rs. 3,75,000/- and therefore, there is no criminal intent in the matter and therefore, the order passed by both the Courts below are bad in law.

Learned Public Prosecutor and counsel appearing for the complainant – non-petitioner No. 2 contended that the petitioner knowing well that he has no right or title to the land bearing Chak No. 22 Murabba No. 36 Killa No. 16 to 18 situated at Chak No. 22, induced the complainant - non-petitioner No. 2 fraudulently and dishonesty to purchase and part with the amount for which the complainant paid a sum of Rs, 3,75,000/- and petitioner entered into an agreement to sell without having the title to the property and thus committed the offence of cheating.

The learned Counsel for the petitioner has relied on decisions of Hon'ble Supreme Court in Rambiraji Devi & Anr. Vs. Umesh Kumar Singh & Anr. 2006 (1) Western Law Cases (SC) Criminal Page 723, wherein the Hon'ble Supreme Court held that the dispute in respect of sale and purchase of land for a sum of Rs. 1,00,000/- out of which the sum of Rs. 80,000/- has been paid to the accused by the complainant. The accused specifically denied having received such payment and refusing to transfer the plot. The Hon'ble Apex Court held that the offence of cheating is not disclosed. The transaction is of civil nature.

In the instant case, the petitioner has not denied having received Rs. 3,75,000/- at the time of entering into the

agreement to sell. It has also not been denied that at the relevant date of entering into an agreement and receiving an amount of Rs. 3,75,000/- from the complainant-non-petitioner No. 2, the land in question was neither recorded nor owned by the petitioner but it was recorded and owned by one Shri Tara Singh may be the brother of the petitioner. If Tara Singh agreed to sale the land in favour of the petitioner yet unless the document of ownership is executed and land in question is transferred in favour of petitioner, it cannot be said that the petitioner acquired the title of the land. The cheating has been defined under Section 415 IPC. Illustration (i) provides that A Sells and conveys an estate to B.A, knowing that in consequence of such sale and purchase he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats. Thus, it cannot be said that very essential ingredients of the offence of cheating are not made-out from the material on record. In the circumstances therefore, it cannot be said that the Court below fell in error in taking cognizance of the offence to issue process. The order impugned cannot be said to have resulted in serious miscarriage of justice or abuse of the process of the Court, warranting interference under Section 482 Cr.P.C. It is also settled law that power under Section 482 Cr.P.C. are to be

exercised sparingly, consciously and exceptional cases and the case in hand is not of that nature and therefore, calls for no interference.

The Criminal Misc. Petition has no merit and the same is therefore, dismissed. The interim order dated 20.09.2006 stands vacated.

(H.R.PANWAR), J.

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